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IN THE

United States Supreme Court

OCTOBER TERM, 1943.

No. 516

WILLIAM C. RAFERT, FARMER DEBTOR AND BANKRUPT UNDER FRAZIER-LEMKE ACT, PETITIONER,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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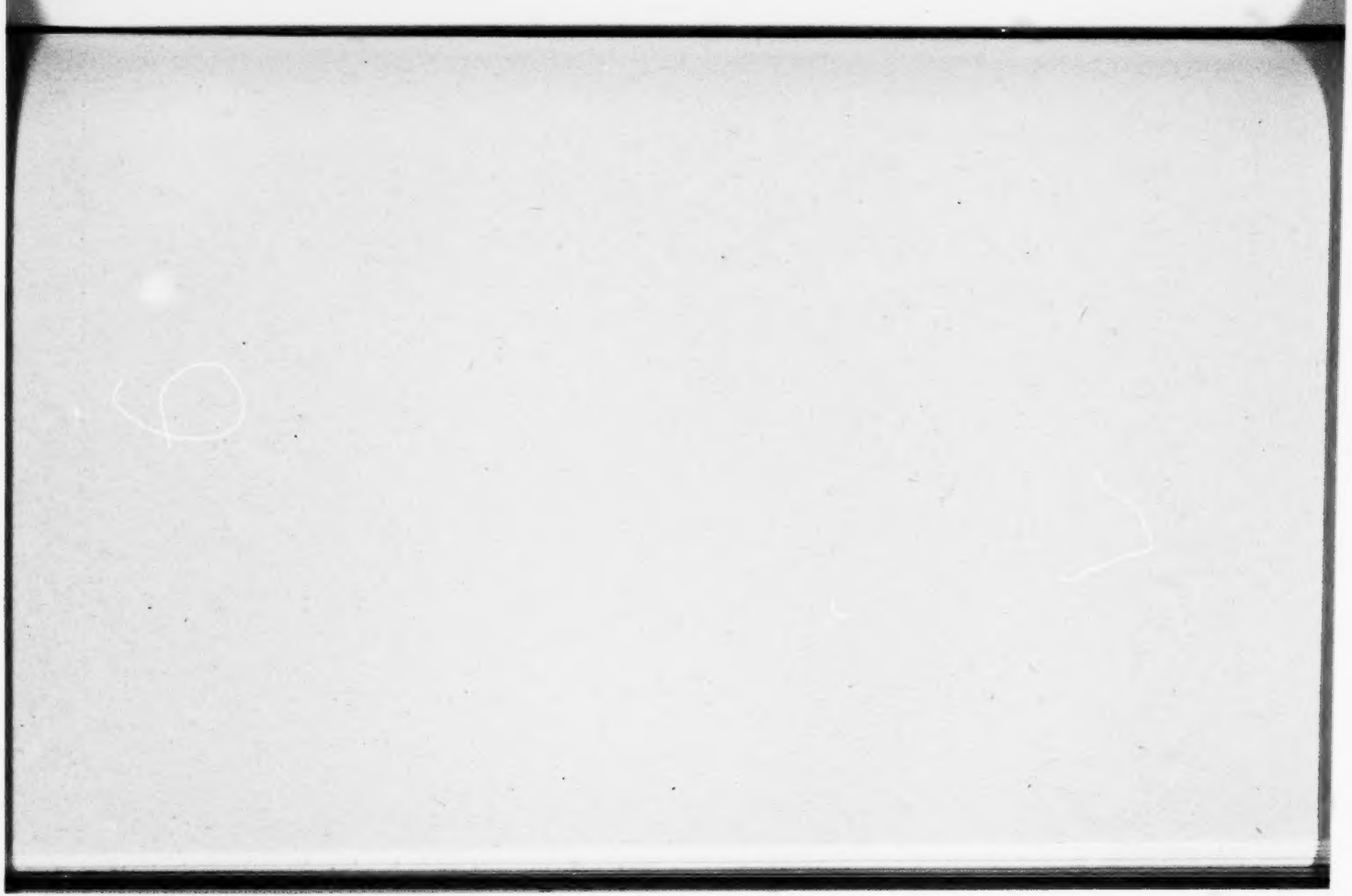

INDEX.

	Page
Petition for Writ of Certiorari	1
Summary Statement of Matter Involved	1
Jurisdiction Claimed	2
Questions presented	3
Reason for Allowance of Writ	3
Prayer for Writ	5
Brief in Support of Petition for Writ of Certiorari	6
Jurisdiction	6
Opinion of Court Below	6
Statement of Case	6
Specifications of Errors	6
Argument	12

TABLE OF CASES.

Borchard v. California Bank, 310 U. S. 311, 60 Sup. Ct. Rep.	4, 16
Federal Land Bank v. Morrison, 133 Fed. (2d.) 613, 6th Circuit	3, 18
John Hancock Mut. Life Ins. Co. v. Bartels, 308 U. S. 180, 60 Sup. Ct. Rep. 221	4, 15
Kalb v. Fuerstein, 308 U. S. 433, 60 Sup. Ct. Rept. 343	4, 18
Peterson v. John Hancock Mut. Life Ins. Co., 116 Fed. (2d.) 148 (8th Circuit)	4, 17
Rafert v. Conway, et al., 119 Fed. (2d.) 102, (8th Circuit)	3, 6, 13
Rafert, in re, 48 Fed. Sup. 459	3, 6
Rafert v. Equitable Life Assn. Soc., Record	6
Wright v. Logan 314 U. S. 139, 62 Sup. Ct. Rep. 508	4
Wright v. Union Central Life Ins. Co., 311 U. S. 273, 61 Sup. Ct. R. 196	14, 19
Wright v. Vinton Branch Mt. Trust Co., 300 U. S. 440, 57 Sup. Ct. Rep. 556, 112 A. L. R. 1455	4, 14, 16
Frazier-Lemke Act, 11 U. S. C. A., Sec. 203, Sec. 75 A to S.	2, 3
Sec. 240 Judicial Code, Title 28, Sec. 247 U. S. C. A.	3, 6
Rules Supreme Court, Rule 38 and subdivisions	3, 4, 6

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THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITLD STATES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan F. Stone, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

That this matter involves solely the question as to whether or not under the Frazier-Lemke Act a Judge of

the United States District Court has the discretion or power to fix the time when the rent shall be payable after the farmer debtor has filed his petition under Section 75s of the Frazier-Lemke Act, to be adjudged a bankrupt. And after the District Court had entered a previous order unappealed from finding that the farmer debtor was a farmer within the act, and entitled to the three (3) year stay, and restoring the property to the bankrupt court, and entered an order pursuant to the mandate of the Circuit Court of Appeals fixing the *kind and amount* of the rent, but fixing *no* time for the payment thereof.

And whether or not if such an order was made attempting to fix the *time* different from the Frazier-Lemke Act it was merely erroneous only and binding unless appealed from, or whether it is an absolutely void order, which the debtor does not need to contest nor appear to resist, and whether an appeal will lie from a later order ordering the bankrupt's property sold for failing to pay the rent at the time fixed by said order of the court, when the bankrupt files objections thereto, on the ground that the United States District Court is without power to fix the time, but offers to comply with the time fixed for the payment of the rent as provided in the Frazier-Lemke Act, which is one (1) year fixed for the payment of the first year's rent, and the rest semi annually from the date of the order granting the bankrupt the three years provided for in the Frazier-Lemke Act.

This proceeding does not involve the payment, or question of time, as to the payment for the first year's rent, as that was adjusted to the satisfaction of both parties, and only involved the question as to the *time* of payment of the rest of the period covered by the stay.

"Jurisdictional Statement"

Judge Delehant who tried this case in the District Court held, "that his previous order requiring that the crop rent received during the pendency of the stay be sold promptly after they were harvested, and proceeds forthwith paid into the Registry and the cash rent be paid *December 1* of each year, and the rental share of conservation money, if

any, be paid into court promptly *on receipt thereof,* was not void, even if erroneous, and was not objectionable, on the ground that the order did not comply with the Frazier-Lemke Act enabling the debtor to retain possession during the stay, provided he pays a reasonable rent *semi annually* as provided in Bankruptcy Act Section 75 Subdivision (s), par. 2, 11 U. S. C. A. 203, sub. s(2). And that said bankruptcy act just quoted is not self executing, holding "that the adverb "semi-annually" will not be allowed a significance that would do violence to the manifest and declared purpose of the legislation."

That his failure to comply with said order fixing the time constituted a type of contumacious conduct which, if persisted in beyond period of indulgence to be granted by the court, would necessitate the allowance of creditor's request for liquidation of debtor's estate by reason of default in payment of the rentals." See Judge Delehant's opinion 48 Fed. Sup. (5), March 15, 1943, Page 459.

The debtor appealed from this decision of Judge Delehant's to the Circuit Court of Appeals, and on October 25, 1943, the Circuit Court of Appeals affirmed the decision of Judge Delehant. It is from this decision that the debtor is petitioning for a writ of certiorari.

Jurisdiction Claimed.

His claim being that the jurisdiction is invoked to grant the Writ under Section 240, Title 28, Par. 347, U. S. Code Ann., and amendments thereto, and under United States Court Rules No. 38.

"Reason Relied Upon for the Allowance of the Writ"

The reasons relied upon for the granting of this writ are:

1. That this Circuit Court of Appeals decision is in conflict with another Circuit Court of Appeals decision involving the same matter, that of Rafert v. Conway, 119 Fed. (2d.) 102.

That it is also in conflict with another Circuit Court of Appeals decision Federal Land Bank of Louisville v. Morrison, 133 Fed. (2d.) 613.

That it is in conflict with the decision of this court in Wright v. Vinton Branch Mt. Trust Bank, 300 U. S. 440, 57 Sup. Ct. Rep. 556, 112 A. L. R. 1455.

Kalb v. Fuerstein, 308 U. S. 433, 60 Sup. Ct. Rep. 243;

Borchard v. California Bank, 310 U. S. 311, 60 Sup. Ct. Rep. 957;

Wright v. Logan, 314 U. S. 139, 62 Sup. Ct. Rep. 508;

John Hancock Mutual Life Ins. Co. v. Bartels, 308 U. S. 180, 60 Sup. Ct. Rep. 221;

Peterson v. John Hancock Mut. Life Ins. Co., 116 Fed. (2d.) 148, (8th. Circuit).

And under Supreme Court Rule 38, Section 4, Subdivision (b), "this circuit court decision has decided an important question of *Federal law*, which has *not been*, but should be settled by this court," and "has decided a Federal question in a way contrary to the principles laid down in the above cited cases."

That this decision has refused to construe the meaning of the Frazier-Lemke Act with reference to the time for the payment of the rent, which the debtor contended should be annually for the first year, and semi-annually thereafter, meaning precisely every six (6) months beginning with the date of the order staying the proceeding for the three (3) years.

Errors Assigned

The Court erred in not passing on that question, and also erred in deciding that because the debtor had not appealed from the first order of Judge Delehant fixing the time of the rent that we could not raise the question as to the meaning of the Frazier-Lemke Act.

The Court further erred in holding that this order of Judge Delehant's was not absolutely void, and that no attention need be paid to it, as the order from which we appealed was the real order that *deprived debtor of his property*, and there is no claim made but what the debtor appealed in time from that order.

WHEREFORE, petitioner prays that a Writ of Certiorari issue under the seal of this court directed to the Circuit Court of Appeals for the Eighth Circuit commanding said Court to certify and send to this court a full and complete transcript of the record, and the proceedings of the Circuit Court of Appeals had in the case, numbered and entitled on its docket, No. 12,568, September Term, 1943, Appeal from the District Court of the United States for the District of Nebraska, William C. Rafert, Debtor, Appellants, vs. the Equitable Life Assurance Society of the United States, Appellee, to the end that this case may be reviewed and determined by this court as provided for by the Statutes of the United States, and the Rules of the United States Court, and the judgment herein of said Circuit Court of Appeals be reversed by this court, and he have such other relief as to this court may seem proper.

Dated this 19th day of November, 1943.

Respectfully submitted,

WILLIAM C. RAFERT,
Petitioner,

By S. L. Winters,
His Attorney.